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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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HYNIX SEMICONDUCTOR INC., HYNIX  
SEMICONDUCTOR AMERICA INC.,  
HYNIX SEMICONDUCTOR U.K. LTD., and  
HYNIX SEMICONDUCTOR  
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER REGARDING TWO PENDING  
TRIAL MOTIONS

[Re Docket Nos. 3278, 3306]

1	RAMBUS INC.,	No. C-05-00334 RMW
2	Plaintiff,	[Re Docket Nos. 1321, 1345]
3	v.	
4	HYNIX SEMICONDUCTOR INC., HYNIX	
5	SEMICONDUCTOR AMERICA INC.,	
6	HYNIX SEMICONDUCTOR	
7	MANUFACTURING AMERICA INC.,	
8	SAMSUNG ELECTRONICS CO., LTD.,	
9	SAMSUNG ELECTRONICS AMERICA,	
10	INC., SAMSUNG SEMICONDUCTOR, INC.,	
11	SAMSUNG AUSTIN SEMICONDUCTOR,	
12	L.P.,	
13	NANYA TECHNOLOGY CORPORATION,	
14	NANYA TECHNOLOGY CORPORATION	
15	U.S.A.,	
16	Defendants.	
17	RAMBUS INC.,	No. C-06-00244 RMW
18	Plaintiff,	[Re Docket Nos. 928, 949]
19	v.	
20	MICRON TECHNOLOGY, INC., and	
21	MICRON SEMICONDUCTOR PRODUCTS,	
22	INC.	
23	Defendants.	

20            This order addresses two outstanding trial motions requiring prompt resolution. The court  
21 has read the briefs filed by the parties and considered the arguments at both sidebar and in separate  
22 additional hearings.

23            **I. FEBRUARY 2000 JEDEC BOARD OF DIRECTORS MINUTES**

24            Rambus seeks to admit into evidence Trial Exhibit 6531, which Rambus argues is a set of  
25 JEDEC board of directors minutes from February 2000. The Manufacturers oppose the request,  
26 arguing first that Rambus has not authenticated the minutes and second that the minutes are hearsay  
27 without an applicable exception. The court disagrees as described below, and admits the document

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1 into evidence.

2       **A.     Authenticity**

3           Federal Rule of Evidence ("FRE") 901 requires the proponent of a document to make a  
4 showing sufficient to support a finding that the document is what the proponent claims it is before  
5 the document may be admitted. This is merely a *prima facie* showing, and the showing does not  
6 need to be made by admissible evidence. *See* FRE 104(a). Indeed, it can be made by as little as a  
7 showing that the documents were found in a party's possession. *E.g., Burgess v. Premier Corp.*, 727  
8 F.2d 826, 835 (9th Cir. 1984). To be clear, if there is a dispute between which version of a  
9 document is authentic, that dispute is for the jury to decide with its verdict, not the court with its  
10 evidentiary rulings. *See United States v. Tank*, 200 F.3d 627, 630 (9th Cir. 2000).

11           Rambus has easily exceeded this threshold. The document in question was produced from  
12 JEDEC's files. Under *Burgess*, that alone suffices. The minutes appear similar in format to other  
13 copies of JEDEC minutes, of which the court has now seen a number. *See* FRE 901(b)(4). Rambus  
14 has also provided pages of deposition testimony about the document from JEDEC's secretary and  
15 EIA's general counsel which suggest that JEDEC only made changes to the minutes (thus creating  
16 doubts about this set of minutes' authenticity) when the substance of the minutes came to light in  
17 related litigation. Rambus has also provided evidence in the form of a copy of the minutes with the  
18 secretary's proofreading corrections, where the corrections indicate typographical, but non-  
19 substantive, changes to the portion of the minutes at issue. Finally, Rambus has presented a  
20 selection of contemporaneous documents that vouch for the correctness of the disputed statement.  
21 This body of evidence, taken in its entirety, is more than sufficient to support a finding that the  
22 document in question is, in fact, a copy of the JEDEC board of directors minutes from February  
23 2000. It also suggests that alterations to the minutes may have occurred only after the minutes came  
24 up in litigation. *See* Perry Decl., Ex. C at 43:2-44:23 (deposition testimony of John Kelly describing  
25 Desi Rhoden's reaction to being confronted with the minutes).

26       **B.     Records of Regularly Conducted Activities**

27           The Manufacturers next argue that the minutes are offered for the truth of the matter

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1 asserted, namely, their discussion of JEDEC's policy toward patent disclosure. The Manufacturers  
2 argue that an insufficient foundation exists to support the application of the business records  
3 exception. *See* FRE 803(6). Rule 803(6) requires testimony from a "qualified witness" that a  
4 document be (1) made at or near the time of the events described in the minutes; (2) by a person with  
5 knowledge; (3) kept in the course of regular business; (4) and made in the course of regular  
6 business. *See id.* The court has discretion to exclude a business record if circumstances indicate a  
7 "lack of trustworthiness." *Id.* A "qualified witness" can be any person familiar with an  
8 organization's record keeping. *United States v. Ray*, 930 F.2d 1368, 1370 (9th Cir. 1990).

9 Rambus examined Ilan Krashinsky about this particular document at trial. Mr. Krashinsky, a  
10 JEDEC representative (though not a board member) testified that he recognized them as JEDEC  
11 board of director minutes. Tr. 2242:25-2245:2. He recognized the minutes as corresponding to a  
12 meeting that took place in February 2000. *Id.* at 2245:3-5. While Mr. Krashinsky had not received  
13 this particular set of minutes, *id.* at 2246:4-7, he said he did regularly receive JEDEC minutes in  
14 similar form and appearance. *Id.* at 2246:13-2247:8. Further, other witnesses previously have  
15 testified as to the way JEDEC minutes were prepared showing that JEDEC minutes meet the  
16 requirements of Rule 803(6).

17 "Because of the general trustworthiness of regularly kept records and the need for such  
18 evidence in many cases, the business records exception has been construed generously in favor of  
19 admissibility." *Conoco Inc. v. Department of Energy*, 99 F.3d 387, 391 (Fed. Cir. 1996) (Bryson,  
20 J.). In light of the policy values underlying the business records exception, the court finds that a  
21 sufficient foundation exists in the trial record as it has developed to find that Exhibit 6531 is a record  
22 of regularly conducted activities within the meaning of Rule 803(6).

23 Accordingly, Exhibit 6531 is admitted into evidence.

24 **II. THE INFINEON LICENSE AND AMENDED LICENSES**

25 Rambus seeks to introduce evidence of royalty rates contained in licenses it negotiated in  
26 2000 to suggest that it did not breach JEDEC's policies because it offered reasonable and  
27 nondiscriminatory licensing terms. The Manufacturers seek to introduce into evidence three further  
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1 licenses: two amended agreements with Elpida and Samsung that changed the royalty rate following  
2 developments in the Infineon litigation and the license with Infineon that arose from the settlement  
3 of the *Infineon* litigation. Rambus seeks to exclude these further license agreements.

4 First, these additional licenses have little, if any, relevance to what a reasonable and  
5 non-discriminatory royalty rate would have been assuming Rambus's patents are valid, infringed and  
6 enforceable. The Infineon license was negotiated following a district judge's announcement that he  
7 intended to dismiss Rambus's patent claims on the basis of spoliation of evidence. The resulting  
8 royalty rate has no probative value on what a reasonable and non-discriminatory license rate was for  
9 Rambus's technology. Similarly, the amended agreements with Elpida and Samsung were caused by  
10 the district judge's now-reversed claim construction and the jury's now-reversed fraud verdict in the  
11 *Infineon* litigation.

12 Second, even if these licenses had some probative value, FRE 403 concerns far outweigh it.  
13 The evidence of what happened in *Infineon* would be unduly prejudicial to Rambus because this  
14 court found that Rambus did not spoliate evidence, while the Federal Circuit reversed the claim  
15 construction and jury verdict that gave rise to the license amendments. These conflicting outcomes  
16 would also be confusing to the jury, and both sides would have to spend an inordinate amount of  
17 time placing the *Infineon* litigation in context to attempt to dispel such confusion.

18 The Manufacturers argue that the evidence of the Infineon royalty rate is relevant in part to  
19 rebut Rambus's argument that the Manufacturers have not paid anything to Rambus because they  
20 want to use Rambus's technology for free. The Manufacturers submit that in light of Rambus's  
21 comments about their failure to pay, they ought to be able to explain that given the rates in the  
22 Infineon license, they would still be at a substantial competitive disadvantage if they accepted what  
23 Rambus claims were reasonable and non-discriminatory royalty rates. This argument would have  
24 some appeal if the Infineon license had been negotiated earlier. However, it was not negotiated until  
25 March of 2005. Therefore, it seems doubtful that concern about being placed at a competitive  
26 disadvantage *vis-a-vis* Infineon explains why the Manufacturers have failed to negotiate a license,  
27 given that they knew of Rambus's patent claims for years prior to the *Infineon* settlement. More  
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1 fundamentally, rebutting Rambus's argument regarding the Manufacturers' purported desire to use  
2 Rambus's technology for free is minimally relevant (it may go to causation). In light of the  
3 substantial Rule 403 concerns discussed above, the licenses cannot come in.

4 Accordingly, the court grants Rambus's motion to exclude evidence of Rambus's settlement  
5 agreement with Infineon and evidence of renegotiation of Rambus's other license agreements in light  
6 of the *Infineon* litigation.

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8 DATED: 2/26/08



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10 RONALD M. WHYTE  
11 United States District Judge  
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**United States District Court**

For the Northern District of California

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Dated: 2/26/08

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